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Attorneys for Plaintiff Assurance Company of America

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

**ASSURANCE COMPANY OF
AMERICA**, an Illinois corporation,

Plaintiff,

v.

MDF FRAMING, INC., an Oregon
corporation,

Defendant,

and

**ORENCO EAST VILLAGE, LLC, ET
AL.**,

Intervenors.

**ASSURANCE COMPANY OF
AMERICA**, an Illinois corporation,

Third Party Plaintiff,

v.

CAPITOL INDEMNITY COMPANY, a
Wisconsin corporation,

Third Party
Defendant.

CASE NO. 3:06-CV-169-MO

**DECLARATION OF ANDREW
MOSES IN SUPPORT OF
PLAINTIFF'S MOTIONS FOR
SUMMARY JUDGMENT**

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the following
is true and correct.

**DECLARATION OF ANDREW MOSES IN SUPPORT OF PLAINTIFF'S
MOTIONS FOR SUMMARY JUDGMENT**

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1. I am an attorney for Plaintiff Assurance Company of America, and I make the declarations contained herein based upon personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of policy number SCP35726646 ("Policy"), effective November 15, 1999, with two annual renewals issued to MDF Framing, Inc. by Assurance Company of America.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Secretary of the State of Oregon's file for MDF Framing, Inc., as certified by the representative of the Secretary of the State of Oregon.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the file for MDF Framing, Inc., maintained by the State of Oregon Construction Contractors Board, as certified by the representative of the Construction Contractors Board.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Secretary of the State of Oregon's file for MDF Construction, Inc., as certified by the representative of the Secretary of the State of Oregon.

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the file for MDF Construction, Inc., maintained by the State of Oregon Construction Contractors Board, as certified by the representative of the Construction Contractors Board.

7. Attached hereto as Exhibit 6 is a true and correct copy of a contract entered into between Great West Contractors, LLC and "MDF Framing," as produced by Intervenor.

8. Attached hereto as Exhibit 7 is a true and correct copy of a certificate of insurance provided to Great West Construction, LLC by MDF Construction, Inc. as produced by Intervenor.

9. Attached hereto as Exhibit 8 is a true and correct copy of a certificate of insurance provided to Great West Construction, LLC by MDF Construction, Inc. as produced by Intervenor.

10. Attached as Exhibit 9 is a true and correct copy of excerpts from Intervenor's Response to Plaintiff's Request for Production, Request for Admissions and Interrogatories.

11. Attached hereto as Exhibit 10 is a true and correct copy of a letter sent to MDF Construction, Inc., dated December 30, 2004, by Stoel Rives as produced by Intervenor.

12. Attached hereto as Exhibit 11 is a true and correct copy of a lawsuit captioned *Association of Unit Owners of East Village at Orenco Station, A Condominium v. Orenco East Village, LLC, et al.* in Washington County Circuit Court, Case No. C050290CV, ("*Orenco Lawsuit*"), as certified by the Washington County Circuit Court.

13. Attached hereto as Exhibit 12 is a true and correct copy of the docket for Washington County Circuit Court Case No. C050290CV as ordered from www.lexis.CourtLink.com.

14. Attached hereto as Exhibit 13 is a true and correct copy of the Fourth Amended Third Party Complaint in the *Orenco Lawsuit* as certified by the Washington County Circuit Court.

15. Attached hereto as Exhibit 14 is a true and correct copy of a letter from Mr. Hunter Bitner to several parties, including Mark Baughman dated September 14, 2005, as produced by Intervenor.

16. Attached hereto as Exhibit 15 is a true and correct copy of a letter dated December 30, 2004 from Stoel Rives to Mr. Douglas Houser, registered agent for Maryland Casualty Company, as produced by Intervenor.

17. Attached hereto as Exhibit 16 is a true and correct copy of claim notes maintained by Assurance Company of America, including notes dated September 22, 2005, as produced by Assurance Company of America in this litigation. See, Deposition of Diane Young, p. 70:21-71:6, Exhibit 40 to Moses Affidavit.

18. Attached hereto as Exhibit 17 is a true and correct copy of a letter dated September 23, 2005 from Diane Young to Otto Foster and a copy of the return receipt indicating that the letter was not claimed as produced by Plaintiff in this litigation. See, Deposition of Diane Young, p. 57:8-59:12, Exhibit 40 to Moses Affidavit.

19. Attached hereto as Exhibit 18 is a true and correct copy of a letter from Wendy Paris to Otto Foster dated September 22, 2005 as produced by the Plaintiff in this litigation.

20. Attached hereto as Exhibit 19 is a true and correct copy of excerpts from the deposition of Wendy Paris dated March 26, 2007, taken in the course of this litigation.

21. Attached hereto as Exhibit 20 is a true and correct copy of a letter dated November 7, 2005 from Diane Young to Otto Foster as produced by Plaintiff in this action.

22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts of claim notes maintained by Assurance from Diane Young dated December 7, 2005, as produced by Plaintiff in this litigation. See, Deposition of Diane Young, p. 70:21-71:6, Exhibit 40 to Moses Affidavit.

23. Attached hereto as Exhibit 22 is a true and correct copy of a letter dated February 2, 2006 from Diane Young to Otto Foster, as produced by Plaintiff in this litigation.

24. Attached hereto as Exhibit 23 is a true and correct copy of an excerpt of Plaintiff's responses to Intervenor's First Request for Production, Admissions and Interrogatories, including Plaintiff's response to Interrogatory No. 1.

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25. Attached hereto as Exhibit 24 is a true and correct copy of Plaintiff's Complaint in the present action with a completed return of service.

26. Attached hereto as Exhibit 25 is a true and correct copy of the Court's order regarding the entry of default against MDF Framing, Inc. in the present action.

27. Attached hereto as Exhibit 26 is a true and correct copy of the settlement agreement between parties involved in the *Orenco Lawsuit* as produced by Intervenor in the present action.

28. Attached hereto as Exhibit 27 is a true and correct copy of the Limited Judgment against MDF Framing, Inc. in the *Orenco Lawsuit* as certified by the Washington County Circuit Court.

29. Attached hereto as Exhibit 28 are true and correct copies of documents produced by Intervenor in the present action that appear to indicate payments made by check to MDF Construction, Inc.

30. Attached hereto as Exhibit 29 are true and correct copies of several letters mailed by Hunter Bitner, counsel for Intervenor for the *Orenco Lawsuit* to other counsel involved in that litigation.

31. Attached hereto as Exhibit 30 is a true and correct copy of a letter from Hunter Bitner to MDF Framing in the *Orenco Lawsuit* for "policy limits of the applicable insurance" dated March 10, 2006, as produced by the Intervenor in the present litigation.

32. Attached hereto as Exhibit 31 is a true and correct copy of a letter from Hunter Bitner to MDF Framing in the *Orenco Lawsuit* dated April 21, 2006, as produced by counsel for Intervenor in the present litigation.

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33. Attached hereto as Exhibit 32 is a true and correct copy of a declaration made by Otto Foster, Jr. on March 27, 2007 as incorporated in the Declaration of Mark Fucile, disclosed rebuttal expert for Intervenor in the present action.

34. Attached hereto as Exhibit 33 is a true and correct copy of the expert declaration of Peter Jarvis, submitted in the present litigation.

35. Attached hereto as Exhibit 34 is a true and correct copy of excerpts from the deposition of Peter Jarvis, taken September 5, 2007 in the present litigation.

36. Attached hereto as Exhibit 35 is a true and correct copy of excerpts of the deposition of Steve Bair, taken May 11, 2007 in this litigation.

37. Attached hereto as Exhibit 36 is a true and correct copy of excerpts from the deposition of Hunter Bitner, taken July 12, 2007 in this litigation.

38. Attached hereto as Exhibit 37 is a true and correct copy of excerpts from the testimony of Brian Hubbs, dated June 13, 2006, and included as an exhibit to Intervenor's expert declaration from RDH Building Sciences, Inc.

39. Attached hereto as Exhibit 38 is a true and correct copy of the report dated August 3, 2007, prepared by RDH Building Sciences and produced by Intervenor in this litigation as part of Intervenor's expert disclosure.

40. Attached hereto as Exhibit 39 is a true and correct copy of the expert report prepared by Mark Lawless and submitted by Plaintiff as part of Plaintiff's expert disclosure in this litigation.

41. Attached hereto as Exhibit 40 is a true and correct copy of excerpts from the deposition of Diane Young, taken February 21, 2007, taken in the course of this litigation.

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42. Attached hereto as Exhibit 41 is a true and correct copy of the Intervenor's Amended Answer and Counterclaims filed in the present litigation.

43. Attached hereto as Exhibit 42 is a true and correct copy of a fax from The Aldrich Law Office, P.C. to Hunter Bitner dated June 16, 2006, a letter from Hunter Bitner to Daniel Goldman dated June 16 and June 20, 2006, an acknowledgement of receipt, and several documents that appear to be copied of checks from insurance companies to the client trust account at either Hoffman, Hart & Wagner, LLP or The Aldrich Law Office, P.C. All documents in Exhibit 42 were produced by Intervenor in this litigation.

DATED this 21st day of September, 2007.

GORDON & POLSCER, L.L.C.

By: /s/ Andrew S. Moses
Gregory L. Baird, OSB No. 92221
Andrew S. Moses, OSB No. 98300
(503) 242-2922
Attorneys for Plaintiff
Assurance Company of America

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I filed the foregoing **DECLARATION OF ANDREW MOSES IN SUPPORT OF PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for all represented parties, including the following:

Curt H. Feig
OSB No. 91136
cfeig@nicollblack.com
William A. Pelandini
WSBA No. 115231, *admitted pro hac vice*
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Nicoll Black Misenti & Feig, PLLC

William Kelly Olson, OSB No. 74239
Mitchell, Lang & Smith
kolson@mls-law.com

Attorneys for Third Party Defendant
Capitol Indemnity Company

Attorneys for Intervenors

I also served the below individual in the manner described below:

MDF Framing, Inc.
c/o Otto Foster, Registered Agent
2940 SE 118th Avenue
Portland, OR 97266-1602

<input checked="" type="checkbox"/>	First Class Mail
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Telefax
<input type="checkbox"/>	UPS

DATED this 21st day of September, 2007.

GORDON & POLSCER, L.L.C.

/s/ Andrew S. Moses
Gregory L. Baird, OSB No. 92221
Andrew S. Moses, OSB No. 98300
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Attorneys for Plaintiff
Assurance Company of America